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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,426

04/05/2005

Haruhiko Habuta

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07/09/2009

HAMRE, SCHUMANN, MUELLER & LARSON P.C.

P.O. BOX 2902-0902

MINNEAPOLIS, MN 55402

EXAMINER

HIGGINS, GERARD T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,426	Applicant(s) HABUTA ET AL.	
	Examiner GERARD T. HIGGINS	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/21/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed 05/21/2009 has been entered. Currently claims 1 and 3-7 are pending and claims 8-11 are cancelled.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 and 3-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With regard to claim 1, the Examiner does not find support to state that the low refractive index layer is a layer "having a lower refractive index than that of the transmittance adjusting layer" in the specification as originally filed. Applicants point to page 12, line 4-13 and 16-29 and page 13, lines 13-20 to provide support for this limitation. While this section provides support for specific materials for each of the transmittance adjusting layer and the low refractive index layer, as well as providing refractive index ranges for each of the transmittance adjusting layer and the low

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refractive index layer; it does not provide support for the broad limitation that the low refractive index layer is a layer "having a lower refractive index than that of the transmittance adjusting layer." Evidence that this limitation is also not supported by the specification as originally filed can also be found in the fact that both the transmittance adjusting layer and the low refractive index layer may be comprised of ZrO_2 . If both layers are comprised of the same material, then the refractive indices would be the same, and therefore this would not support the limitation that the low refractive index layer is a layer "having a lower refractive index than that of the transmittance adjusting layer."

Response to Arguments

4. Applicant's arguments, see Remarks, filed 05/21/2009, with respect to the rejection of claims 1-7 under 35 USC 112, second paragraph, the rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Nishihara et al. (US 2002/0054983) as evidenced by Nishihara et al. (US 2004/0105182), and the rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Nishihara et al. (WO 03/025922) have been fully considered and are persuasive. The relevant rejections have been withdrawn.

The Examiner agrees that by defining the low refractive index layer as "having a lower refractive index than that of the transmittance adjusting layer" provides enough definition to render the term "low" a definite term; however, this new limitation does not find support in the specification as originally filed, see section 3 above.

The addition of the limitation that the low refractive index layer as "having a lower refractive index than that of the transmittance adjusting layer" defines the current invention over the prior art Nishihara et al. (US 2002/0054983) because the rationale of a mere duplication of parts of the transmittance adjusting layer can no longer apply because the layers have a different refractive index.

Applicants have perfected priority and have removed Nishihara et al. (WO 03/025922) as a reference against the current claims, and therefore the rejection based upon that reference has been withdrawn.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to GERARD T. HIGGINS whose telephone number is (571)270-3467. The examiner can normally be reached on M-Th 10am-8pm est. (Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GERARD T. HIGGINS
Examiner
Art Unit 1794

/G. T. H./
Examiner, Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794